

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>MARY ANN KELLY</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 175,429
<b>SEALRIGHT COMPANY, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>HARTFORD ACCIDENT &amp; INDEMNITY CO.</b>	)	
Insurance Carrier	)	
	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

Claimant appealed Administrative Law Judge Julie A.N. Samples' January 5, 2001, Award. The Appeals Board heard oral argument on June 20, 2001, in Topeka, Kansas.

**APPEARANCES**

Claimant, Mary Ann Kelly, of Tonganoxie, Kansas, appeared pro se. Steven C. Alberg of Overland Park, Kansas, appeared on behalf of the respondent and its insurance carrier. J. Paul Maurin, III of Kansas City, Kansas, appeared on behalf of the Kansas Workers Compensation Fund.

**RECORD AND STIPULATIONS**

The Appeals Board (Board) has considered the record and has adopted the stipulations listed in the Award.

**ISSUES**

The claimant appealed the Administrative Law Judge's (ALJ) 12 percent permanent partial general disability award and the ALJ's denial of claimant's request for payment of past medical expenses and to specifically authorize certain ongoing medical expenses as future medical expenses. At oral argument, before the Board, claimant acknowledged she had failed to prove she was entitled to a higher permanent partial general disability award

based on a work disability. Thus, the issues on appeal for Board review are limited to: (1) whether claimant proved certain past medical treatment and prescription medication expenses were related to her low back injury, and (2) whether claimant proved her ongoing need for certain prescription medications is related to her low back injury.

In contrast, respondent contends that claimant failed to satisfy her burden of proving that the past medical treatment and prescription medication expenses that she requested to be paid as authorized medical were related to her back injury. Additionally, respondent argues claimant failed to prove her need for future prescription medications is related to her back injury. Accordingly, the respondent requests the Board to affirm the ALJ's Award.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record, considering the briefs and the parties' arguments, the Board makes the following findings and conclusions:

The ALJ's Award sets out findings of fact and conclusions of law in some detail. It is not necessary to repeat those findings and conclusions in this Order. Except the Board does find the record contains persuasive evidence that proves that claimant received some past medical treatment for her work-related low back injury that respondent should be responsible for paying as an authorized medical expense.

ALJ Alvin E. Witwer, who was the ALJ trying the case at the time, had ordered claimant to undergo an independent medical examination conducted by Dr. Shechter. As a result of that order, Dr. Shechter saw claimant on February 18, 1997. Thereafter, at the September 7, 2000, regular hearing, the parties agreed that orthopedic surgeon Dr. Nathan Shechter's independent medical report dated February 18, 1997, should be entered into the record without the doctor's testimony.

The ALJ concluded that claimant suffered a permanent injury to her low back as a result of an accident that occurred while she was employed by the respondent on November 16, 1992. This conclusion was largely based on claimant's testimony and Dr. Shechter's independent medical report. The ALJ further found that Dr. Shechter's opinion was persuasive that as a result of claimant's low back injury she sustained a 12 percent permanent functional impairment and based on that finding awarded claimant a 12 percent permanent partial general disability. But the ALJ also found that claimant had failed to meet her burden of proving certain medical treatment and prescription expenses were related to or were necessary in treating her low back injury. Thus, the ALJ denied claimant's request for respondent to pay those expenses as authorized medical expenses.

The Workers Compensation Act (Act) places the duty on the employer to provide medical treatment and medicines "as may be reasonably necessary to cure and relieve the

employee from the effects of the injury.<sup>1</sup> Here, the respondent stipulated that it provided medical benefits for treatment of claimant's low back injury in the amount of \$935. But the respondent did not provide a list of the health care providers who were paid, nor for what medical services those payments were made. Claimant claims her low back injury required additional necessary medical treatment and prescription medications as provided and prescribed by various health care providers not paid for by the respondent. Claimant requests that the respondent be ordered to pay for those medical treatment and prescription expenses as authorized medical as required by the Act. Unfortunately, claimant failed to properly introduce many of those bills into the record. Furthermore, many of the bills that were introduced were for treatment that was not described in sufficient detail to determine if it was treatment to care or relieve claimant from the effects of the work-related injury.

As noted in the ALJ's Award, claimant attempted to admit into the record a large number of medical and prescription bills she attributes as necessary medical and prescription expenses needed to treat her low back injury. Respondent and the Fund objected to the admission of those various bills on the basis that claimant failed to establish a foundation for admission because claimant failed to establish that the expenses were necessary or related to her low back injury. The ALJ found and the Board agrees, those bills are inadmissible. First, because they were offered outside the claimant's terminal date. And second, even if the bills would have been offered within the terminal date, the claimant failed to establish the proper foundation for their admission because there was no evidence that the bills were either related to her low back injury or were otherwise necessary expenses to cure or relieve her from the effects of her work-related low back injury.

The Board, however, finds that Dr. Shechter's February 18, 1997, independent medical examination report does prove that certain medical treatment services, which were performed by various health care providers, identified therein, constituted medical treatment necessary to cure or relieve the effects of claimant's low back injury. In Dr. Shechter's medical report's Summary and Conclusion, he found claimant's work-related back injury had been treated with conservative measures and pain management, such as a TENS unit, various medications and epidural blocks. Before Dr. Shechter examined claimant, he was supplied with medical records from various health care providers that had previously treated claimant for her back injury and other health problems not related to her back injury. In his independent medical report, he summarized claimant's previous medical treatment based on his review of those records, and specifically related that treatment to claimant's work-related injury.

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<sup>1</sup> See K.S.A. 1992 Supp. 44-510(a).

The Board concludes, based on claimant's testimony and Dr. Shechter's independent medical report, that the respondent is ordered to pay as an authorized medical expense the reasonable medical treatment expenses, subject to the medical fee schedule, for the following four treatments:<sup>2</sup>

- (1) November 20, 1992, claimant received treatment for her back injury through Dr. Lawhead at the Physicians' Clinic of University of Kansas Medical Center, Kansas City, Kansas.
- (2) November 23, 1992, claimant was admitted to the University of Kansas Medical Center. Treatment included an MRI scan on November 24, 1992, and steroid injections. Claimant was discharged on November 25, 1992.
- (3) Claimant was then followed by Dr. Paul O. Boynick and Dr. George Varghese at the University of Kansas Medical Center. Claimant received two epidural injections as an out-patient at their direction.
- (4) Claimant then received physical therapy treatment and a TENS unit was provided at Providence-St. Margaret Hospital located in Kansas City, Kansas.

In addition, Dr. Shechter's independent medical report shows that the claimant was examined by Dr. Paul Stein in May, which would have been May of 1993, following the November 16, 1992, accident. On July 12, 1993, while claimant was still being represented by an attorney, at claimant's attorney's request, claimant was also examined by neurosurgeon Dr. Revis C. Lewis. Dr. Shechter's report indicates that claimant saw a number of physicians later in 1995, through 1997, who included, neurosurgeon Dr. Frank Holladay, Dr. Larry Campbell, Dr. Tildon Osko of the Mayo Clinic and neurosurgeon Dr. Frederick B. Meyer. On April 3, 1995, claimant underwent a myelogram and CT scan at the Providence-St. Margaret's Hospital.

Of those services, the Board finds respondent should only be responsible for payment of the myelogram and CT scan completed at Providence-St. Margaret's Hospital on April 3, 1995. All of the other physicians that claimant saw starting with Dr. Stein in May of 1993, who either examined or treated claimant, are too far removed from her November 16, 1992, accident to be obviously related and there is insufficient supporting evidence to prove that those subsequent treatments were reasonably necessary or otherwise related to her low back injury. Thus, the Board concludes the respondent is not responsible for payment of those medical treatment expenses as an authorized medical expense. If however, the claimant did consult one of the physicians identified in the preceding

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<sup>2</sup> See K.S.A. 1992 Supp. 44-510(a)(1)(2).

paragraph for examination, diagnosis, and treatment of her work-related low back injury, then respondent, upon presentation of the billing statement, would be responsible for payment up to the unauthorized medical expense limit of \$350.<sup>3</sup>

The Board affirms and adopts as its own all the other findings and conclusions of the ALJ as set out in the Award that are not inconsistent with this Order.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Board that ALJ Julie A.N. Sample's January 5, 2001, Award is affirmed, except, in addition, the respondent, Sealright Company, Inc. and its insurance carrier, Hartford Accident & Indemnity, are ordered to pay as an authorized medical expense the medical treatment expenses for services performed by the health care providers as specifically set forth in this Order.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2001.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Claimant appears pro se  
Steven C. Alberg, Attorney for Respondent  
Julie A.N. Sample, Administrative Law Judge  
J. Paul Maurin, III, Attorney for Workers Compensation Fund  
Philip S. Harness, Workers Compensation Director

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<sup>3</sup> See K.S.A. 1992 Supp. 44-510(c).